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34
35 UNITED STATES DISTRICT COURT
36 NORTHERN DISTRICT OF CALIFORNIA
37 SAN FRANCISCO DIVISION

38
39 MARY L. SMITH, individually and on behalf
40 of all others similarly situated,

41 Plaintiff,

42 v.

43 GOOGLE, LLC,

44 Defendant.

45
46 Case No.: 5:23-cv-03527-PCP
47 (Consol. w/ 5:23-cv-04191-PCP)
48 (Related to 5:22-cv-07557-PCP
49 & 5:23-cv-04953-PCP)

50 **JOINT RULE 26(f) REPORT AND INITIAL
51 CASE MANAGEMENT STATEMENT**

52 Date: January 11, 2024
53 Time: 1:00 p.m.
54 Location: San Jose Courthouse
55 Judge: Honorable Judge P. Casey Pitts

1 Plaintiffs Mary Smith, Malissa Adams, Tracylyn Patterson, Cary Goldberg, Tyisha Sheppeard,
2 Teresa Wright, Rheazene Taylor, Tiffany Layton, Jamila Armstrong, and Monica Townsend
3 (collectively, “Plaintiffs”) and Defendant Google, LLC (“Google”) (collectively, the “Parties”), by and
4 through their undersigned counsel, hereby submit the following Joint Case Management Statement
5 pursuant to Federal Rule of Civil Procedure 26, Civil Local Rule 16-9, and the Standing Order for All
6 Judges of the Northern District of California (eff. Jan. 17, 2023), in advance of the Initial Case
7 Management Conference in the above-captioned case scheduled for January 11, 2024 at 1:00pm before
8 the Honorable P. Casey Pitts.

9 **I. JURISDICTION AND SERVICE**

10 The Parties agree that no issues exist regarding personal jurisdiction or venue. Google was
11 formally served on August 1, 2023. *See* ECF No. 17 (Proof of Service). There are no other defendants
12 in this action.

13 Plaintiffs allege that the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331
14 because this action arises under the Federal Wiretap Act, 18 U.S.C. §§ 2510, et. seq., and pursuant to
15 § 28 U.S.C. 1332(d) as this is a class action in which the amount in controversy exceeds the sum or
16 value of \$5,000,000 and at least one member of the Class is a citizen of a state different from the
17 Defendant. The Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1337(a) over Plaintiffs’
18 state and common law claims.

19 **II. FACTS**

20 ***Plaintiffs’ Statement:***

21 This is a privacy class action against Google, arising from Google’s wiretapping of electronic
22 communications on major online tax filing websites offered by H&R Block, TaxAct, and TaxSlayer,
23 among other sites. The device that makes this wiretapping possible is Google Analytics’ ubiquitous
24 tracking pixel, which is embedded in the JavaScript of online tax preparation websites. This pixel
25 gathers information from website visitors when they interact with the tax-preparation platforms. As a
26 result of this wiretapping, U.S consumers have been transmitting their sensitive financial information
27 to Google – inadvertently and without consent –when they file their taxes online.

1 Disclosing tax-return information without consent is a crime. 26 U.S.C. § 7216. Aiding and
2 abetting the unlawful disclosure of tax-return information is a crime. Inspecting unlawfully obtained
3 tax-return information is a crime. 26 U.S.C. § 7213A(a)(2). Plaintiffs bring this action on behalf of
4 themselves individually and a putative class of all people in the United States who used an online tax
5 preparation provider subject to Google's wiretap, including but not limited to H&R Block, TaxAct, or
6 TaxSlayer, and who, as a result of using those services, had their tax-filing information transmitted to
7 Google. This action also seeks to certify subclasses of class members from California, Illinois, Florida,
8 and Texas who used these same websites. Among other causes of action, Plaintiffs allege violations of
9 state and federal wiretapping laws and consumer protection statutes.

10 ***Google's Statement:***

11 Website developers, including developers of online tax filing websites, use a variety of analytics
12 tools to analyze users' experiences on their properties. Their use is widely understood, dutifully
13 disclosed, and regularly consented-to by users. This District has repeatedly recognized that developers
14 have the right to employ such analytics tools, and that the providers of those analytics tools are mere
15 vendors or service providers to the developer.

16 Google Analytics (GA), one such tool, is used by millions of websites and apps across the
17 world. It provides developers with critical insights on web and app usage and user engagement so that
18 developers can improve their products.

19 Plaintiffs allege that tax filing websites H&R Block, TaxSlayer, and TaxAct (the "Websites")
20 disclosed users' sensitive financial data to Google through the use of GA. Plaintiffs allege that the
21 Websites implemented GA on their websites using pixels and that, through this tool, Google intercepted
22 Plaintiffs' sensitive financial information.

23 Plaintiffs' claims are not sufficiently alleged and Google denies all of Plaintiffs' claims and
24 allegations that Google disclosed, intercepted, and/or used Plaintiffs' sensitive health data in violation
25 of statutory and/or common laws. Google will present further views regarding the relevant facts and
26 disputed factual issues at a later date.

1 **III. LEGAL ISSUES**

2 ***Plaintiffs' Statement:***

3 Plaintiffs in this proposed class action allege that Google violated federal and state law by
4 improperly and illegally accessing private tax return information from Plaintiffs and the proposed class.
5 Plaintiffs allege Google did not receive consent to receive confidential tax, financial and related
6 information, but intentionally obtained such information. Plaintiffs allege Google is liable to the class
7 on eight causes of action, as follows:

- 8 Violation of the California Invasion of Privacy Act, California Penal Code § 631
- 9 Violation of the California Invasion of Privacy Act, California Penal Code § 632
- 10 Violation of the California Invasion of Privacy Act, California Penal Code § 635
- 11 Violation of the Federal Wiretap Act, 18 U.S.C. §§ 2510, *et seq.*
- 12 Violation of the Federal Wiretap Act, 18 U.S.C. § 2512
- 13 Violation of the Florida Security of Communications Act, Florida Statutes § 934.10
- 14 Violation of the Illinois Eavesdropping Act, 720 ILCS 5/14-6
- 15 Violation of the Texas Criminal Wiretap Act (Texas Code of Criminal Procedure, Article
16 18A.502(1); and Texas Penal Code Sections 16.02(b)(1)–(b)(3), (b)(5))

17 ***Google's Statement:***

18 Google denies that it has violated any laws, denies that Plaintiffs have stated a claim under any
19 legal theory, and denies that Plaintiffs may pursue claims on behalf of any putative class. Without the
20 benefit of a decision on Google's pending motion to compel arbitration, motion to stay pending
21 arbitration, and motion to dismiss, the primary legal issues at this stage likely include:

- 22 (1) Whether Plaintiffs are required to pursue their claims in arbitration.
- 23 (2) If Plaintiff in the related *Hunt* matter is compelled to arbitrate his claims with H&R Block,
24 whether the claims in this matter against Google should be stayed pending the outcome of the
25 arbitration.
- 26 (3) Whether Plaintiffs have alleged sufficient facts to plead a violation of the California
27 Invasion of Privacy Act ("CIPA"), Cal. Penal Code § 631; a violation of CIPA, Cal. Penal Code § 632;
28 a violation of CIPA, Cal. Penal Code § 635; a violation of the Federal Wiretap Act, 18 U.S.C. § 2510;

1 a violation of the Federal Wiretap Act, 18 U.S.C. § 25102; a violation of the Florida Security of
2 Communications Act, Florida Statutes § 934.10; a violation of the Illinois Eavesdropping Act, 720
3 ILCS 5/14-6; and/or violations of the Texas Criminal Wiretap Act (Texas Code of Criminal Procedure,
4 Article 18A.502(1) and Texas Penal Code Sections 16.02(b)(1)–(b)(3), (b)(5)).

5 (4) Whether Plaintiffs consented to the conduct alleged in the Complaint.

6 (5) Whether Plaintiffs Patterson, Goldberg, Shepherd, Layton, and Armstrong's claims are
7 barred by the applicable statutes of limitations.

8 Additional legal issues may be presented, particularly if the case progresses past the pleading
9 stage.

10 **IV. MOTIONS**

11 **A. Prior Motions**

12 ***Joint Statement:***

13 As of the date of this filing, this Court has ruled on several motions for leave to appear *pro hac*
14 *vice*, as well as Plaintiffs' Motion to Relate and Sever. In that ruling, the Court related this matter to
15 the previously filed case *Doe v. Meta Platforms* (No. 22-cv-07557-PCP) and the later-filed case *Hunt*
16 *v. Meta Platforms* (No. 23-cv-04953) and denied Plaintiffs' Motion to Sever as moot.

17 After the Court's ruling on the Motion to Relate, Google filed an administrative motion to align
18 the motion-to-dismiss briefing schedules in this matter and the *Hunt* matter. Plaintiffs opposed that
19 motion. The Court denied Google's motion.

20 The parties respectfully request that the Court allow the parties to address the issue of severance
21 at the CMC. *See Fed. R. Civ. P. 21* ("The court may . . . sever any claim against a party."); *Earth Island*
22 *Inst. v. Quinn*, 56 F. Supp. 3d 1110, 1114 (N.D. Cal. 2014) ("The Court has broad discretion in
23 determining whether to order severance under Rule 21." (citations omitted)). Severing the claims
24 against Google in *Hunt* and consolidating the severed claims with *Smith* will avoid the risk of
25 inconsistent results and further the interests of party and judicial efficiency.

26 ***Google's Statement Regarding Severance:***

27 The claims against Google in *Hunt* are based on the same operative facts and adjudicating the
28 claims against Google in two separate cases risks creating inconsistent results. Severing and

1 consolidating would also obviate the need for the Court to adjudicate two Motions to Compel
2 Arbitration and a Motion to Stay. In *Hunt*, H&R Block has indicated that it intends to seek to compel
3 arbitration. Google's motions to compel arbitration in *Smith* and *Hunt* are intertwined with H&R
4 Block's forthcoming motion to compel arbitration in *Hunt*. As such, if the Court severs the claims
5 against *Hunt* defendant H&R Block, Google intends to withdraw its motion to compel arbitration in
6 *Smith*, and would not file a motion to compel arbitration in *Hunt*. Moreover, severing and consolidating
7 would avoid the need to place *Smith* and *Hunt* on the same schedule and would permit the *Smith* case
8 to proceed more quickly.

9 ***Plaintiffs' Statement Regarding Severance:***

10 As noted above, Plaintiffs join in the request that the Court address the issue of severance at the
11 case-management conference. Plaintiffs do not, however, agree with Google's characterization of
12 Plaintiffs' claims in this matter as intertwined with the *Hunt* plaintiffs' claims against H&R Block.
13 Plaintiffs have not sued H&R Block, and the Plaintiffs subject to Google's motion to compel arbitration
14 in this matter did not agree to arbitrate their claims against Google. These matters will be fully
15 addressed in Plaintiffs' opposition to Google's motion to compel arbitration.

16 **B. Pending Motions**

17 Google filed its motion to compel arbitration of Plaintiffs Mary Smith and Cary Goldberg's
18 claims or to stay litigation pending the forthcoming motions to arbitrate in *Hunt* and any subsequent
19 arbitrations, and its motion to dismiss on December 15, 2023. The motions are currently set for hearing
20 on March 7, 2024 at 10:00 a.m. Plaintiffs' oppositions are due January 29, 2024, and replies are due
21 February 21, 2024. ECF No. 46.

22 ***Google's Statement Regarding Motion to Compel Arbitration:***

23 If the claims against Google in *Hunt* are not severed, Google proposes that the motion to compel
24 arbitration be decided at the same time as H&R Block and Google's forthcoming motions to compel
25 arbitration in the related *Hunt* matter. The relief requested by Google's motion to compel arbitration in
26 this matter is inextricably intertwined with H&R Block's motion to compel arbitration in *Hunt*. ECF
27 No. 51 at 1 ("Google therefore brings this motion to compel arbitration of Smith and Goldberg's claims
28 in this action, if H&R Block successfully moves to compel arbitration in *Hunt*."). Google therefore

1 proposes that the motions to compel arbitration in *Hunt* and *Smith* be decided simultaneously for the
2 efficiency and ease of all parties and the Court.

3 ***Plaintiffs' Statement Regarding Motion to Compel Arbitration:***

4 Again, Plaintiffs do not agree with Google's characterization of Plaintiffs' claims in this matter
5 as intertwined with the *Hunt* plaintiffs' claims against H&R Block, as will be fully addressed in
6 Plaintiffs' opposition to Google's motion to compel arbitration in this matter. Further, Plaintiffs do not
7 agree that Google's motions to compel arbitration in *Hunt* and this matter should be decided
8 simultaneously. Google's motion to compel arbitration in this matter will be fully briefed and ready for
9 decision by February 21, 2024. while Google's motion to compel arbitration in the *Hunt* matter has not
10 yet been filed and no briefing schedule has been set. There is no reason that the motion to compel
11 arbitration in this matter should be delayed by an as-yet unfiled motion against H&R Block—an entity
12 that Plaintiffs have *not* sued—for an indefinite period time.

13 **C. Other Anticipated Motions**

14 At the earliest practicable time after conducting adequate discovery, Plaintiffs will move to
15 have the claims certified for class treatment under Fed. R. Civ. P. 23. In addition, the Parties may move
16 for summary judgment and make various discovery and pretrial motions as necessary.

17 As more fully discussed below in Section VIII (Discovery), and for the reasons stated above,
18 Google proposes that the Court stay discovery until the motion to compel arbitration, motion to stay
19 pending arbitration, and motion to dismiss have been decided. Google believes that any additional
20 motion practice will be contingent on the Court's ruling on the motions to compel arbitration, motions
21 to stay pending arbitration, and motions to dismiss.

22 **V. AMENDMENT OF PLEADINGS**

23 Plaintiffs filed their Consolidated Amended Complaint on October 9, 2023. ECF No. 35.
24 Plaintiffs reserve their right to amend the Consolidated Complaint consistent with Fed. R. Civ. P. 15,
25 including to the extent any order from the Court requires or permits further amendment. Plaintiffs have
26 proposed a deadline for amending the pleadings in their proposed schedule in Section XVI below.

27 Google reserves all rights regarding any further motion by Plaintiffs to amend the Consolidated
28 Amended Complaint.

1 **VI. EVIDENCE PRESERVATION**

2 ***Plaintiffs' Statement:***

3 The Parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored
4 Information, and commenced the meet and confer process pursuant to Fed. R. Civ. P. 26(f). The Parties
5 are aware of and have taken significant steps to comply with their evidence-preservation obligations
6 under the Federal Rules of Civil Procedure, including the rules governing electronic discovery.

7 From Plaintiffs' perspective, the parties' meet-and-confer concerning evidence preservation
8 raised significant concerns as to whether Google has taken or intends to take appropriate measures to
9 preserve data transmitted to Google by the tax-filing service platforms at issue in this matter. Plaintiffs
10 and Google are continuing to confer about this issue and Plaintiffs do not believe the Court's
11 intervention is necessary at this time. Plaintiffs do, however, reserve the right to raise this issue with
12 the Court in the future should doing so become necessary.

13 As Google notes below, during the Parties' initial discussions, Google requested that Plaintiffs
14 provide the Google Analytics identifiers for each web property at issue in this matter. Plaintiffs are
15 endeavoring to do so and will continue to confer with Google on this issue. Nevertheless, Plaintiffs
16 believe that Google has the ability to identify, isolate, and preserve data transmitted to Google by the
17 tax-filing service platforms named in the Complaint using the names of these services, the URLs of
18 their web properties, or by other means. Plaintiffs' position is that Google must preserve the transmitted
19 to it by at least the tax-filing service platforms named in the Complaint via these and other means
20 available to it.

21 ***Google's Statement:***

22 Google respectfully submits that the deadline to complete the Rule 26(f) conference should be
23 March 28, 2024: 21 days after the hearing on Google's motion to compel arbitration, motion to stay
24 pending arbitration, and motion to dismiss. Previously, the Parties jointly stipulated pursuant to Section
25 VI of this Court's standing order that "the Rule 26(f) conference . . . would be more productive after
26 resolution of Google's anticipated motion to dismiss." ECF No. 31. And in the Order to Continue the
27 Initial Case Management Conference and Related Deadlines dated September 6, 2023, the Court
28 granted that stipulation, ruling that the initial case management conference would be held no earlier

1 than 21 days after the hearing on Google’s motion to dismiss, and that the “deadline to complete the
2 Rule 26(f) conference [would] be 21 days before the initial case management conference.” ECF No.
3 32-1. On November 30, however, the Court set the initial case management conference for January 11,
4 2024, *before* the hearing on Google’s anticipated motion to dismiss. Now that Google has also filed a
5 motion to compel arbitration and motion to stay pending arbitration, Google reiterates its view that it
6 would be more productive to complete the Rule 26(f) conference after the Court’s ruling on its pending
7 motions.

8 Google cannot unilaterally identify with certainty the Google Analytics accounts and properties
9 that are at issue in this action based only on the names of the tax-filing service platforms or the URLs
10 associated with those names. During the parties’ meet-and-confer concerning evidence preservation,
11 Google requested that Plaintiffs provide Google Analytics identifiers for the tax-filing service
12 properties that Plaintiffs claim are at issue in this matter. Plaintiffs have not yet provided these
13 identifiers. Once Plaintiffs provide these identifiers, Google will assess the burden of preserving
14 additional data relevant to the properties that Plaintiffs identify.

15 **VII. DISCLOSURES**

16 For the same reasons discussed in Section VI above, and consistent with the Court’s Order,
17 ECF No. 32-1, the Parties submit that the deadline to exchange initial disclosures should be 21 days
18 after the Court hears Google’s motion to dismiss.

19 **VIII. DISCOVERY**

20 **A. Assignment of Magistrate**

21 As an initial matter, Plaintiffs note that a magistrate judge has not yet been appointed in this
22 matter. Plaintiffs believe this matter should be assigned to Magistrate Judge Virginia K. DeMarchi.
23 Three pending matters related to unauthorized transmission of private information via the pixel
24 developed by Meta Platforms, Inc. (f/k/a Facebook) were assigned to Judge DeMarchi in February
25 2023, including *Doe v. Meta Platforms* (No. 22-cv-07557-PCP), to which this matter has been related.¹
26

27

¹ The other two Meta-Pixel related matters before Magistrate DeMarchi are *In re Meta Pixel*
28 *Healthcare Litigation*, Case No. 3:22-cv-3580-WHO (VKD), and *Gershzon v. Meta*, Case No. 3:23-
cv-00083-SI (VKD).

1 Just as the *Doe* case concerns tax-filing service providers' transmission of consumer data to Meta via
2 its pixel, this matter concerns the transmission of information from those same tax-filing service
3 providers to Google via its pixel. By virtue of her longstanding supervision of these three Meta-Pixel
4 related cases, Magistrate DeMarchi has extensive knowledge of and facility with the technologies at
5 issue, which – at least in broad outline – operate similarly across platforms.

6 Magistrate DeMarchi has addressed and coordinated numerous preliminary discovery issues in
7 the Meta-Pixel matters to date. Importantly, Magistrate DeMarchi has issued a uniform Rule 502(d)
8 Clawback Order, Protective Order, and ESI Protocol in these cases. These discovery-management
9 protocols can and should serve as the starting point for submission and entry of similar orders in this
10 matter. Assignment of this matter to Judge DeMarchi will thus achieve significant efficiencies for the
11 parties and the Court.

12 Google has no objection to Plaintiffs' request that discovery in this matter be referred to
13 Magistrate Judge DeMarchi, or to whichever Magistrate Judge the Court prefers. Google does not agree
14 to Plaintiffs' purported uniform orders and protocols and looks forward to negotiating a Clawback
15 Order, Protective Order, and ESI Protocol appropriate to this case and these parties. Finally, although
16 the parties have stipulated (and the Court has ordered) that discovery should not commence until after
17 the Court has heard Google's pending motion to dismiss, Google is nevertheless willing to agree to
18 negotiate in good faith and endeavor to file a Clawback Order, Protective Order, and ESI Protocol
19 within 30 days of the Case Management Conference.

20 **B. Discovery Issues**

21 ***Joint Statement:***

22 The parties have stipulated (and the Court has ordered) that the initial case-management
23 conference should not take place until 21 days after the hearing on Google's motion to dismiss, which
24 requests that the Court resolve the entire case. ECF Nos. 31 and 32. While the Court subsequently set
25 a Case Management Conference on January 11, 2024, the parties do not interpret that order as
26 superseding the parties' stipulation and the Court's order as it relates to the timing of the initial case-
27 management conference, and thus to the commencement of discovery.

Plaintiffs' Statement Regarding Discovery:

In accordance with the Court’s Order concerning the initial case-management conference in this matter (ECF No. 32) and Federal Rule of Civil Procedure 26, Plaintiffs believe that discovery should begin following the completion of the parties’ 26(f) conference. Plaintiffs anticipate that they will seek discovery concerning topics including but not limited to (i) Google’s receipt and storage of data transmitted to it by the tax-filing services, (ii) technical aspects of the relevant pixels, (iii) Google’s knowledge of the data being transmitted by tax-filing service providers and the uses to which that data was put. In addition to seeking discovery from Google, Plaintiffs will also conduct third-party discovery, including discovery from the tax-filing service providers.

Plaintiffs may need to seek relief from the standard limits on the number of deponents and/or interrogatories. The extent of any anticipated relief from the rules is not known at this time. Plaintiffs reserve all rights to seek relief at an appropriate time in the future.

Google's Statement Regarding Discovery:

The Court also has broad discretion to stay discovery pending the disposition of a dispositive motion, such as Google’s motion to dismiss. *See In re Nexus 6P Products Liability Litig.*, 2017 WL 3581188, at *1 (N.D. Cal. Aug. 18, 2017) (noting that courts in this district may stay discovery pending resolution of a dispositive motion where the pending motion is potentially dispositive of the entire case, and the pending motion can be decided absent discovery). Here, Google’s motion to dismiss will be potentially dispositive of the entire case. In addition, any discovery is unnecessary for resolution of the motion to dismiss because the motion is based solely on allegations in the Consolidated Amended Complaint. *See, e.g., Gibbs v. Carson*, 2014 WL 172187, at *3 (N.D. Cal. Jan. 15, 2014) (granting motion to stay discovery until disposition of the defendants’ motion to dismiss). Even if the motion to dismiss does not dispose of the entirety of the case, the motion could substantially narrow the scope of discovery that, if conducted prior to the disposition of the motion to dismiss, could be resource-intensive, burdensome, and ultimately unnecessary. For efficiency and to conserve judicial and party resources, Google believes that a stay of discovery pending the disposition of Google’s motion to dismiss is appropriate.

1 Google is willing to meet and confer with Plaintiffs to discuss the timing and sequencing of
2 discovery after the motions to compel arbitration and to dismiss have been decided.

3 **IX. CLASS ACTIONS**

4 All attorneys of record for the Parties have reviewed the Procedural Guidance for Class Action
5 Settlements.

6 ***Plaintiffs' Statement:***

7 Plaintiffs will move to have the claims certified for class treatment under Fed. R. Civ. P. 23.
8 Plaintiffs believe that the evidence will establish that class certification is appropriate.

9 The Complaint identifies the following classes for certification.

- 10 *Nationwide Class.* All people in the United States who used online tax preparation providers
11 such as H&R Block, TaxAct, or TaxSlayer, while those websites had the Google pixel
12 installed on them.
- 13 *California Subclass.* All people in California who used online tax preparation providers such as
14 H&R Block, TaxAct, or TaxSlayer, while those websites had the Google pixel installed on
15 them.
- 16 *Florida Subclass.* All people in Florida who used online tax preparation providers such as
17 H&R Block, TaxAct, or TaxSlayer, while those websites had the Google pixel installed on
18 them.
- 19 *Illinois Subclass.* All people in Illinois who used online tax preparation providers such as
20 H&R Block, TaxAct, or TaxSlayer, while those websites had the Google pixel installed on
21 them.
- 22 *Texas Subclass.* All people in Texas who used online tax preparation providers such as H&R
23 Block, TaxAct, or TaxSlayer, while those websites had the Google pixel installed on them.

24 Plaintiffs reserve the right to modify the foregoing class definitions based on further
25 investigation and discovery in the case.

26 ***Google's Statement:***

27 Google does not believe the Court should address the class allegations until after it rules on the
28 motion to compel arbitration and motion to dismiss. Google disputes that Plaintiffs may establish a

1 basis for class certification under Fed. R. Civ. P. 23, or that Plaintiffs will be able to show a class-wide
2 basis for awarding damages.

3 **X. RELATED CASES**

4 *Hunt v. Meta Platforms, Inc.*, No. 5:23-cv-04953-PCP and *In re Meta Pixel Tax Filing Cases*,
5 No. 5:22-cv-07557-PCP have already been related by order of this court. The Parties are not presently
6 aware of any further cases meeting the requirements of Civil Local Rule 3-12 as interpreted by courts
7 in this district that have been filed in this Court or any other.

8 **XI. RELIEF**

9 ***Plaintiffs' Statement:***

10 Plaintiffs seek judgment against Google and ask that the Court grant the following: class
11 certification, damages, restitution, and injunctive relief. Plaintiffs' damages claims include statutory,
12 actual, nominal, common law, and/or punitive damages, as well as pre- and post-judgment interest,
13 reasonable litigation expenses, costs of suit and attorney's fees, and other and further relief as the Court
14 deems necessary and appropriate.

15 The Court may award statutory damages of \$5,000 per violation for violation of the California
16 Invasion of Privacy Act, Cal. Penal Code §§ 631, 635, and 637.2, as well as statutory damages of not
17 less than \$100 a day for each day of violation or \$10,000, whichever is greater, for violation of the
18 Federal Wiretap Act, 18 U.S.C. § 2512. The precise number of Class Members during the relevant
19 period is subject to discovery, and the extent of actual, nominal, common law, and/or punitive damages
20 is subject to discovery as well as expert testimony. As a result, Plaintiffs cannot presently provide an
21 estimate of the total damages potentially recoverable against Google should the Class(es) be certified
22 and prevail at trial.

23 ***Google's Statement:***

24 Google contends that Plaintiffs are not entitled to any relief from Google and that the complaint
25 fails to state a claim upon which relief can be granted. At this stage in the litigation, Google is not in
26 a position to describe the bases on which any alleged damages should be calculated in the event liability
27 were to be established (which Google contests). Google does not anticipate filing any counterclaims.

1 **XII. SETTLEMENT AND ADR**

2 Per ADR L.R. 3-5, the Parties and their counsel have read the handbook entitled “Dispute
3 Resolution Procedures in the Northern District of California,” available at www.adr.cand.uscourts.gov.
4 The Parties have met and conferred regarding mediation and ADR options.

5 ***Plaintiffs’ Statement:***

6 Plaintiffs submit that private mediation is appropriate.

7 ***Google’s Statement:***

8 Google believes it is premature to engage in ADR or settlement discussions at this time.

9 **XIII. OTHER REFERENCES**

10 As noted above, Google has filed a motion to compel Plaintiffs Smith and Goldberg to submit
11 their claims against Google in this action to final and binding individual arbitration. Plaintiffs oppose
12 Google’s motion and will file their opposition on January 29, 2024, as ordered by the Court.

13 The Parties otherwise agree that this case is not suitable for reference to a special master, or the
14 Judicial Panel on Multidistrict Litigation at this time. The Parties reserve their rights on the suitability
15 of these mechanisms if facts or circumstances change.

16 **XIV. NARROWING OF ISSUES**

17 The Parties are not presently aware of any issues that may be narrowed by agreement.

18 Google believes that the motion to compel arbitration and motion to dismiss—if they are not
19 dispositive of the cases in whole—are likely to narrow or eliminate issues for discovery and for trial.
20 Plaintiffs disagree and oppose both Google’s motion to compel arbitration and its motion to dismiss,
21 to which Plaintiffs’ oppositions will be filed in accordance with the schedule ordered by the Court.

22 **XV. EXPEDITED TRIAL PROCEDURE**

23 The Parties agree that this is not the type of case that can be handled under the Expedited Trial
24 Procedure of General Order No. 64 Attachment A.

25 **XVI. SCHEDULING**

26 ***Joint Statement:***

27 The parties are aware of this Court’s guidance that the trial date should be no more than 18
28 months from the initial case management conference. As noted above, the parties have stipulated (and

1 the Court has ordered) that the initial case-management conference would be moved to the first
2 available date falling no earlier than 21 days after the hearing on Google's motion to dismiss. ECF Nos.
3 31 and 32. The Court subsequently set a Case Management Conference on January 11, 2024, which
4 the parties interpret as not superseding the parties' stipulation and the Court's order as it relates to
5 timing of the initial case-management conference and related deadlines. The parties agree that the
6 initial case-management conference following the hearing on Google's motion to dismiss would be a
7 more appropriate time to set a case schedule in this matter.

8 Nevertheless, out of an abundance of caution and to comply with the Court's standing order,
9 the Parties jointly propose the following schedule.

Event	Deadline
Motions to Dismiss & Compel Fully Briefed	February 21, 2024
Motions Hearing	March 7, 2024
Exchange of Initial Disclosures	21 days after an Order denying MTD (if granted, set new briefing schedule)
Pleading Amendment Deadline	90 days after commencement of discovery
ADR Deadline	120 days after an Order denying MTD
Close of Fact Discovery	225 days after an Order denying MTD
Plaintiffs Motion for Class Certification and Class Expert Reports Due	225 days after an Order denying MTD
Google's Opposition to Class Certification and Class Expert Reports Due	30 days after motion for class certification
Plaintiffs' Class Certification Reply and Rebuttal Class Expert Reports Due	14 days after Google's opposition to class certification
Close of Expert Discovery	14 days after Google's opposition to class certification
Class Certification Hearing	14 days after motion is fully briefed
Dispositive Motion Deadline	30 days after Order on class certification
Dispositive Motions to be Heard	14 days after motions are fully briefed
Final Pretrial Conference	14 days before trial commences

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Trial Commences 18 months from initial case management conference
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XVII. TRIAL

Plaintiffs have requested a trial by jury and anticipate that a trial will take 10-15 days. Google's position is that it is not possible to estimate the length of the trial before resolution of Google's motion to compel arbitration and motion to dismiss.

XVIII. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

Plaintiffs certify that there is no conflict of interest (other than the named parties) to report.

Google filed its Certification of Interested Entities or Persons on October 20, 2023 (ECF No. 39), which reported that Google LLC, XXVI Holdings Inc. (Holding Company of Google LLC), and Alphabet Inc. (Holding Company of XXVI Holdings Inc.), (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding.

XIX. PROFESSIONAL CONDUCT

All attorneys of record for the Parties have reviewed the Guidelines for Professional Conduct in the Northern District of California.

XX. ANY OTHER MATTERS

Plaintiffs request that the Court authorize Plaintiffs' counsel to file a motion for appointment of a leadership committee and lead counsel pursuant to Fed. R. Civ. P. 23(g). Plaintiffs' counsel have reached an agreed leadership structure and thus anticipate that their leadership motion will be uncontested. Google takes no position regarding Plaintiffs' request to file such a motion. Plaintiffs' counsel will file their motion and supporting materials promptly upon receiving authorization from the Court.

1 Dated: December 28, 2023

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CIVIL L.R. 5-1(h)(3) ATTESTATION

Pursuant to Civil Local Rule 5-1(h)(3), I, Joel D. Smith, hereby attest under penalty of perjury that concurrence in the filing of this document has been obtained from all signatories.

Dated: December 28, 2023

By: /s/ *Joel D. Smith*